

ST 01-0027-PLR 07/05/2001 CONSTRUCTION CONTRACTORS

Persons who permanently affix tangible personal property to real estate act as construction contractors and incur Use Tax liability on their cost price of tangible personal property they physically incorporate into realty. See 86 Ill. Adm. Code 130.1940. This letter rescinds two letter rulings issued April 5, 1990 (St 90-0141) and April 25, 1990 (St 90-0168). (This is a PLR).

July 5, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is being sent to rescind two Letter Rulings previously sent to you on April 5, 1990 and April 25, 1990. Please be advised that the Taxpayers' Bill of Rights extends specific rights to taxpayers. Section 4 (c) of the Taxpayers' Bill of Rights directs the Department to abate taxes and penalties assessed based upon erroneous written information or advice given by the Department. Consequently, you will not incur tax liability as a result of your reliance upon the specific provisions of our prior correspondence. However, upon your receipt of this Private Letter Ruling, the provisions of this Private Letter Ruling shall become binding.

The April 5, 1990 letter stated as follows:

This will acknowledge receipt of your letter of February 9, 1990, in which you stated as follows:

As can be seen from our letterhead, we are a CPA Firm in the CITY area.

We are having some difficulty interpreting the new sales tax law for one of our clients.

The client is in the carpet and tile business and primarily sells to contractors who build residences in the CITY area. As such, we have, in the past, paid sales tax on purchases pursuant to our understanding of 'Rule 6'. Of course, if there were retail sales, over the counter, the sales tax was paid on the retail selling price. This latter item is a small portion of the client's business.

Therefore, our major question is whether or not Rule 6 still applies. Is the company liable for any new taxes as of January 1, 1990 or can we continue to pay on purchases as we have done in the past?

As indicated above, the primary customer is the builder of a residence and, as such, we are providing the product and installation to the

contractor.

Please be advised the proper tax procedure for your client is dependent upon his purchaser's mode of annexation of his products. If the contractor permanently affixes the tile and carpet to the structure, your client is acting as a retailer. As such, your client incurs Retailers' Occupation Tax liability and the contractor incurs Use Tax liability on the sale.

If the contractor merely tacks the carpet to the structure rather than permanently affixing it, the contractor is deemed to be acting as a retailer. Thus, your client should obtain a resale certificate from the contractor and charge no sales tax on the sale to the contractor.

For informational purposes, please find, enclosed, 86 Ill. Adm. Code 130.1940, which details the taxability of construction contractors.

If we may be of any further assistance, please do not hesitate to contact our office.

The April 25, 1990 letter stated as follows:

This will acknowledge receipt of your letter of April 20, 1990, in which you stated as follows:

I thank you for your response to my letter dated February 9, 1990. I also thank you for taking the time to speak to me on the subject of sales tax on tile/carpeting during our recent telephone conversation.

I would like to summarize my understanding of the conclusions that we reached during our telephone conversation.

During our discussion, I indicated to you that we were paying the sales tax, self assessed, on the purchases of tile and carpeting that was affixed to the structure. Basically, the tax is being paid on these purchases as if we were paying to the wholesaler.

As for 'tack down' carpeting, since this is considered personal property, it should be treated as a retail sale. Of course, any over-the-counter sales, at retail, will be treated as a retail sale.

Therefore, it is our conclusion that, for the most part, we pay 7% of our purchases and in isolated situations, we pay 7% of the selling price. The latter situation only applies to retail sales and sales of 'tack down' carpeting. All items permanently affixed to the structure are deemed to be real estate and subject to the sales tax on cost.

Please be advised when you sell carpeting and tile which becomes permanently affixed to real estate, you incur Use Tax liability on your cost price of such items. If you provide a Certificate of Resale to your supplier, you must self-assess Use Tax directly to the Department. If you do not provide your supplier with a resale certificate, you must pay him Use Tax when you purchase your supplies.

If your company sells carpeting which is 'tacked down' rather than permanently affixed, you are acting as a retailer and incur Retailers' Occupation Tax liability on all such sales. These sales, for calculating sales tax liabilities, are treated the same as over-the-counter retail sales.

When your company purchases carpet and tile which becomes permanently affixed to real estate, Use Tax liability is based on your cost price of your supplies. When your company is acting as a retailer, your Retailers' Occupation Tax liability is based on gross receipts from your sales.

If we may be of any further assistance, please do not hesitate to contact our office.

## **DEPARTMENT'S RESPONSE**

The above referenced letters are rescinded in their entirety, effective immediately. We are revoking these letters because they do not adequately explain the tax consequences where a contractor must assess the local tax on a retail sale.

Construction contractors act as retailers and incur Retailers' Occupation Tax liabilities when they sell items over-the-counter or they sell items that remain tangible personal property when installed. When contractors act both as contractors and retailers of building materials, they can give a certification to suppliers that they, the contractors, will self-assess and pay tax if they do not know at the time of purchase how they will use the tangible personal property. Please refer to the copy of the proposed regulation, 86 Ill. Adm. Code 130.2075(b), which explains this process more fully.

Please note Section 130.2075(b)(2) explains that "the purchaser may not give such certification to his supplier unless the purchaser, if he will convert the tangible personal property into real estate in this State, agrees to, and does, assume the liability for reporting and paying the tax to the Department in the same form (Illinois Retailers' Occupation Tax, and local Retailers' Occupation Tax if applicable) in which the supplier would have reported and paid such tax if the supplier had accounted for the tax to the Department." Therefore if the purchaser converts the tangible personal property into real estate, he must include its cost price on his sales tax return as taxable receipts and pay applicable local Retailers' Occupation Tax in addition to the State Retailers' Occupation Tax.

Please be informed the Illinois Department Of Revenue is in the process of drafting a regulation that will apply to sellers of floor coverings and provide guidance regarding when they will act as construction contractors and when they will act as retailers.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Karl W. Betz

Associate Counsel

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Enc.